

SENATE SELECT COMMITTEE ON COVID-19

21 MAY 2020

Attorney-General's Department

Senator James Paterson asked the following question at the hearing on 21 May 2020:

Senator PATERSON: That would be great, thank you. I'll move to the Attorney-General's Department now. I have questions about safely returning to work as restrictions are now being eased. What work has the department done on providing advice to employers about how to provide a safe working environment for employees?

Mr Hehir: The department's been working with Safe Work Australia. Work health and safety is the responsibility of the states and territories, but the national cabinet has actually been involved and has endorsed a set of 11 principles in how to respond to that. A key element of those principles is that Safe Work Australia would be the main point of reference for information around how businesses could respond. They've been working with their state and territory partners, if you like, in producing information. As much of it as possible is being done consistently at the national level. There are some differences that mainly rely on different health advice from jurisdictions, but, in the main, the vast majority of the guidance has been agreed nationally. All of that's been put up onto the Safe Work Australia website as the main source of reference. Of course, Safe Work Australia includes the social partners of the ACTU and industry reps, so it's quite a joined-up approach across the board. I think there are 23 or 24 industries with detailed guidelines up on the Safe Work Australia website, and they're working on a number more. I'm happy to provide details of those on notice. They are publishing them regularly. In addition to this, they did a large amount of work to redesign their website. It actually wasn't initially intended for this sort of work, but they've redesigned their website to enable ease of access and ease of navigation for people more broadly. There's been a huge amount of work done. My colleague Ms Baxter, from Safe Work Australia, isn't here, but I'm happy to take any other questions on notice in relation to the roles of Safe Work Australia specifically.

The response to the honourable Senator's question is as follows:

On 24 April 2020, the National Cabinet agreed to a set of 10 National COVID-19 safe workplace principles (the Principles), including specific commitments to mitigate against COVID-19 and respond appropriately to any cases in the workplace.

The Principles include the commitment for Safe Work Australia (SWA) to be a central hub of work health and safety (WHS) guidance and tools that Australian business and workers can use to manage the health and safety risks posed by COVID-19. On 30 April 2020, SWA launched a new digital toolkit on its website providing industry-specific guidance and tools that business and workers can use to manage the health and safety risks posed by COVID-19.

As at 27 May 2020, SWA has published guidance for 26 industries (plus a 'general' industry). Guidance published on the website has been developed in consultation with SWA Members, representing jurisdictions, employer groups and unions.

While noting the important role of SWA in providing WHS guidance on COVID-19, responsibility for regulating and enforcing WHS laws is the responsibility of the Commonwealth (Comcare), state and territory jurisdictions.

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Attorney-General's Department

Senator Kristina Keneally asked the following question at the hearing on 21 May 2020:

Senator KENEALLY: I'm mindful of time, but, in that vein, on notice, how often has the department met with or consulted employer groups? And how often has the department met with or consulted ACTU or other employee representatives? If possible, could you supply the matters on which you were consulting them?

The response to the honourable Senator's question is as follows:

Representatives of the Attorney-General's Department attended a roundtable convened by the Attorney-General on 20 March 2020 with business and employee representatives to gather information about industrial relations issues arising in the context of the COVID-19 outbreak. At the roundtable on 20 March 2020, attendees discussed the potential for joint applications to the Fair Work Commission under section 157 of the *Fair Work Act 2009* to vary modern awards to support the Governments' timelimited response to the COVID-19 pandemic.

In addition to the Attorney-General, representatives of his office and of the department, the following parties attended the roundtable on 20 March 2020:

- The Australian Chamber of Commerce and Industry
- Victorian Chamber of Commerce and Industry
- Australian Industry Group
- Business Council of Australia
- NSW Business Chamber
- Australian Council of Trade Unions
- Australian Nursing and Midwifery Federation
- Health Services Union
- Australian Services Union
- United Workers Union
- Fair Work Ombudsman
- Safe Work Australia, and
- National Farmers Federation.

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Fair Work Commission

Senator Kristina Keneally asked the following question at the hearing on 21 May 2020:

Senator KENEALLY: Are you able to tell me anything about their consultation periods?

Ms O'Neill: I can. There's a similar spread. In addition to the five that I just mentioned, there are another two that had a one-day access period, one that is not clear on the information I've got in front of me, another one at three days, another one at five days, three at six days and another one at four days.

Senator KENEALLY: So, basically, of the 14 that you've received, they've all used fewer than seven days?

Ms O'Neill: As I indicated, the only group that I'm speaking about here are applications that have been made that involve a shorter access period.

Senator KENEALLY: How many have been made overall, then?

Ms O'Neill: Applications to vary agreements?

Senator KENEALLY: Yes, since the regulation came into place.

Ms O'Neill: I'd have to take that on notice. I don't have that. What I can tell you is that, as at 18 May, there have been 130-odd applications to vary agreements this financial year.

Senator KENEALLY: Okay. If I can put on notice—I'm short on time and I'm trying to save time for Senator Watt in this block of time—of those 14, how many were supported by the relevant union?

Ms O'Neill: I'll take that on notice.

The response to the honourable Senator's question is as follows:

The *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020* applies to applications to vary agreements where the access period started on or after 17 April 2020.

Table 1: Agreement variations applications 17 April – 19 May 2020 inclusive

Outcome	Number
Withdrawn	3
Access period starting before 17 April	14
Access period starting on or after 17 April	17
Access period shorter than 7 days	15
Access period 7 or more days	2
Total applications	34

Of the 15 applications to vary an enterprise agreement with a shorter access period, three had an access period of one clear day and one had an access period of less than one clear day. The meaning of a 'day' in this context is determined under s. 36(1) of the *Acts Interpretation Act 1901*. In calculating a 'clear' day, neither the day on which the access period commenced nor the day on which it ended are counted. In the matter in which the access period to vary the enterprise agreement was less than one clear day, the access period both commenced and ended on the same day.

Note: one application lodged on 19 May 2020 was not entered into the Commission's case management system until the next day which is why the General Manager stated there had been 14 applications with a shorter access period.

Of the 15 applications to vary an enterprise agreement with shorter access periods, in five matters a union lodged a Form F23B – Declaration of employee organisation in relation to variation. While Form 23B is a declaration in support of the application, unions can also use the form to advise the Commission they disagree with one or more statements in the employer's declaration relating to the variation. Four of the unions completed the declaration in support and did not indicate disagreement with the employer declaration relating to the variation. One union indicated it neither supported nor opposed the application.